

学校编码: 10384

分类号_____密级 _____

学号: 20051402837

UDC _____

厦门大学

博士学位论文

WTO 扩展秩序论

On the Extended Order of the WTO

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论文提交日期: 2014 年 月

论文答辩时间: 2014 年 月

学位授予日期: 2014 年 月

答辩委员会主席: _____

评 阅 人: _____

2014 年 月

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摘要

本文试图探讨在多边贸易体制扩展的过程中，影响其功能发挥的结构性原因，探究观念在秩序生成中的作用，以期为晚近多哈回合困局的破解提供一个解释框架。

WTO 是一个集合了政治、经济与法律因素的混合秩序体系。自上世纪四十年代产生以来，多边贸易体制就一直处于扩增与发展之中，但其发展趋势处于一种非均衡状态，并呈现出阶段性特点。造成这种现象有外部与内部两种原因：一方面，国际经济秩序的总体格局是多边贸易体制演变的大背景，是其生存环境，GATT/WTO 体系受到这个环境的塑造；另一方面，作为当代国际经济组织之一，WTO 代表的国际机制本身也是国际经济关系的参与者与行动者，在提供规则、形成共识、集聚期望等方面影响或改变国家（政府）行为。在此过程中，WTO 扮演着双重角色：它既是体系外国际经济秩序的“被塑造者”，同时也发挥自身的影响力，塑造着国际经济秩序。WTO 功能发挥情况，有赖于其自身的平衡能力。

GATT 年代，由暗含大国政治承诺的“深嵌自由主义”维持着多边贸易体制的平衡，因此，体系功能稳定。但在 WTO 时期，“深嵌自由主义”协调机制失效，在政治法治主义、经济自由主义的共同作用下，WTO 被期望改造成一个全能型的国际组织，代替多边体系原有的契约型、平衡型的模式，这就要求 WTO 必须具有内生性的秩序创造功能。

而 WTO 不具备发挥这种功能的政治构造。目前的 WTO 初具立法、司法和行政三权分立的特点，但非彼此制衡之构造，WTO 秩序扩展功能因此表现出非均衡性。在议题选择、谈判方式及程序、协议的缔结等立法方面，WTO 仍然保留着贸易政治的特征，在经济利益纷争下，面临失序的可能；WTO 争端解决机制（DSM），即其司法机制，则主要是秩序的维护者，通过维护各成员方在涵盖协定项下权利与义务的平衡为多边贸易体制提供可靠性和可预测性。DSM 在 WTO 的发展中，充任了一个保守者的角色，有助于体系凝聚力的形成。WTO 立法机制将原属体系外的经济社会领域议题

逐步纳入其中，形成法律秩序，是一个“吸纳”过程，与此相反，DSM 通过裁决产生法律效力，约束成员方的决策行为，进而影响市场和社会，形成一种扩散性的经济与社会秩序。DSM 旨在维持既有的权利义务秩序，但 DSB 裁决内容具有独特性，其所确定的并非具体的、可计算的权利与义务，而是要求相关国家进行政策调整，而政策调整对成员方产生的未来后果则具有不可预测性。因此，DSM 司法功能，也具有不平衡性。以总干事为代表的行政机构则是在部长级会议授权之下履行职责，在 WTO 的秩序创造中，基本不能发挥主动性作用。WTO 构造失衡的特点，影响了其功能的发挥，可以部分地解释多哈回合困境之原因。

本文共分六章。前面四章分析 WTO 的秩序性质、秩序扩展的原理，并对多哈回合所暴露的结构性问题做了较详细的分析。作者对多哈回合的分析并非要提供一个对策论，而是旨在为本文的论证过程提供实证基础。

第五章论述了多边贸易体制中的观念。该章是本文的写作重点，旨在从多边贸易体制的历史发展中总结出观念对它的影响。文章确认了观念的两个价值，即实践价值和认识价值。观念的实践价值是，多边贸易体制从产生到发展，始终伴随着观念的变化，观念甚至有可能左右着该体制秩序的内容和秩序生成的进程，观念已成为影响 WTO 未来发展诸多因素中的一个独立变量；研究观念的认识意义是，西方学界中为数不少的学者承认观念对国际贸易秩序的推动作用，建构主义理论甚至认为其对秩序具有塑造性作用，而我国的 WTO 研究者尚未对其加以充分的注意，本文旨在为 WTO 的观念研究做初步的工作。该章从历史的纵向与现实的横向两个维度梳理了 WTO 体制中的观念形态，并对其作用于多边贸易秩序的机理进行了剖析。

第六章作为全文的结尾章。该章论述了 WTO 未来发展的一个可能的方向：适应性治理结构。作者认为，在 WTO 的某些方面，比如，SPS 协定的管理体制中，这种结构正在形成。WTO 未来要面对各种不确定性，包括来自政治、社会、经济领域的各种风险，要提高应对风险的能力，提高组织在国际经济关系中的竞争力和领导力，就需要发展适应性治理结构。目前 WTO 受制于各种权力之争、利益之争，已经呈现出制度上的惰性，公信力

和权威受到削弱，后续的发展应该注入新的活力，作者认为这些新的活力就是知识与观念，而要做到拓展新知识、培养新观念，社会学习就必不可少，为此，作者认为“认知共同体”这一特殊群体在知识生成、观念塑造过程中的特殊作用值得重视。该章旨在发掘知识、观念在 WTO 秩序扩展中的积极作用。

关键词：世界贸易组织；观念；秩序

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ABSTRACT

The dissertation attempts to explore the structural factors affecting the function of multilateral trade system in its expanding process, and to explore the role that ideas play in the generation of order, so as to provide an explanatory framework for the recent Doha dilemma .

The World Trade Organization (WTO) is the joint system of legal, economic and political elements. Since its establishment in 1940s in the last century, the multilateral trading regime has been expanding, while the momentum is not always in a balance state, the process has demonstrated some sporadic characteristics. The phenomenon can be explained from both internal and external reasons, i.e., in one aspect, GATT/WTO regime has been fashioned in the general background of international politics and economy; in the other aspect, being a modern international organization, the WTO plays the role of an international actor through the regime mechanism, affecting and changing the behavior of the members by way of providing norms, forming consensus, and converging expectation. In this process, the WTO plays a dual role: while it is the "sculpture" of the order of international economic system, it also plays the role of shaping the international economic order. The function of WTO depends on its ability of balancing.

In the age of GATT , "embedded liberalism", a implied commitment by the power politics had been maintaining the balance of multilateral trade system, therefore, the system showed some characteristics of stability in its function, But in the WTO period, the compromising mechanism provided by "embedded liberalism" became invalid; Under the combined action of doctrine of rule of law and economic liberalism, the WTO is expected to be transformed into a versatile international organization, substituting for the original mode as a contractual and balancing organization, that requires the WTO to have an

endogenous function of order creating.

But the WTO does not have the political structure to provide this function. WTO has a character of separating its three powers, namely, legislative, judicial and administrative organs, but the structure is not a balancing one, which makes the function of the WTO in its expansion exhibit an imbalance state. the WTO still retains the characteristics of trade politics in respect of topics selection, negotiation process and modality and may face the possibility of becoming disorder raised by the disputes in the talks based on economic interests. The WTO dispute settlement mechanism (DSM), namely the judicial mechanism, is the keeper of the order. Through the maintenance of the balance of rights and obligations under the covered agreements for all members, it provides reliability and predictability for the multilateral trading system. DSM plays a conservative role in the development of the WTO, contributing to the cohesion forming in the system.

Through gradual incorporation of external economic and social issues in the domain of the WTO, legislative mechanism form a legal order, and it is a process of absorption. On the contrary, DSM through the legal effect of its rulings and recommendations will constraint decision making of the related members, thereby affecting the market and society, forming a diffusion of economic and social order. DSM aims to maintain the order of existing rights and obligations, but the content in the rulings of DSB has an unique character, they don't determine the kinds of rights and obligations that are specific, or calculable, but the kinds of obligations of the members concerned to adjust their domestic policy. While the future consequences of the policy adjustment on the members are unpredictable, judicial function of DSM also is not balancing; The administrative organs of the WTO, led by the Director General, are to perform their duties under the authorization of the Ministerial Conference, and play a limited role to extend the order of the multilateral trading system. Structural imbalance of the WTO has affected its function, which can partially explain the reasons why the Doha round fell into trouble.

The dissertation is divided into six chapters. The previous four chapters present analysis on the essence of WTO order, the principle of order expansion, making a detailed analysis on the structural problems exposed in Doha round. Purpose of the author to give an analysis on the Doha round is not to provide a strategy to copy with real problems, but to provide an empirical basis for the argumentation in the dissertation.

Chapter Five discusses ideas in the multilateral trade system. This chapter is the focus of the dissertation, aiming to summarize the influence of ideas on multilateral trading system from a historical perspective. The dissertation identifies two values, namely the practical value and the cognitive value. The dissertation holds that ideas attach great significance to the WTO, which can be illustrated by the fact that the multilateral trading system from its origin to the later development, has been juxtaposed with the change of ideas, that the ideas may even influence the content in the order of the system and the process of generating such order, and that among the many factors, ideology has become an independent variable which can affect the future development of the WTO. The cognitive meaning for the study of idea in the WTO can be shown by the fact that many western scholars have admitted the function of ideology in the fashioning process of the international trade order, and that constructivism doctrine even thinks that it has the effect of shaping the order, while Chinese researchers on the WTO have not paid full attention to that effect, this dissertation aims to provide a preliminary study on this project. Adopting both a historical and a realistic approach, the chapter examines the ideology development in WTO system, and provides an analysis on the mechanism of its role in the multilateral trading system.

Chapter Six discusses a possible direction of future development of WTO, i.e. adaptive governance structure. The author believes that, in some aspects of the WTO, this structure is being formed, for which SPS agreement will provide an example. The future WTO will face various uncertainties, including risks from political, social, and economic field, it needs an adaptive governance

structure to improve the ability to cope with the risks, as well as to improve the competitiveness and leadership in international economic relations. The present WTO is trapped in various struggles for power or material interests, showing a demerit of systematic inertia, It's development should be injected new vitality, the author thinks that the new vitality is knowledge and ideas, and that to enlarge the basis of new knowledge and to form new ideas, social learning is indispensable, therefore, "epistemic community" is worthy of attention due to its special role in the process of knowledge- generating and ideas-creating. This chapter is not to make predictions to the future of the WTO or to raise any suggestions thereof, but intends to explore the cognitive factor which will have a positive function in the extended order of the WTO.

Key Words: WTO; Idea; Order

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